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South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

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OFFICE OF RESEARCH

Room 213, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, (803) 734-3230

HOUSE WEEK IN REVIEW

The House of Representatives amended, approved, and sent to the Senate two bills establishing **TORT REFORM** provisions.

The House amended, approved, and sent to the Senate **H.3744**, the **SOUTH CAROLINA ECONOMIC DEVELOPMENT, CITIZENS, AND SMALL BUSINESS PROTECTION ACT**. This legislation provides comprehensive revisions for the way in which the state's judicial system handles torts. A tort is a private or civil wrong or injury, including an action for bad faith breach of contract, for which the court provides a remedy in the form of an action for damages. Provisions of the legislation include:

The legislation establishes new provisions for **venue**. The legislation provides that civil actions against a resident individual defendant must be tried in the county where the cause of action arose or where the defendant resides. An action against a nonresident individual must be tried in the county where the cause of action arose. An action against a domestic corporation must be tried in the county of the corporation's principle place of business or where the cause of action arose. An action against a foreign corporation must be tried in the county where the corporation has its principle place of business in this State or where the cause of action arose. The legislation establishes criteria for determining a principal place of business. Current law provides the court may change the place of trial when the county designated is not proper, when there is reason to believe a fair and impartial trial could not take place in the designated county, or the convenience of the witnesses would be promoted by the change. This legislation requires the court to change venue in these circumstances. The legislation eliminates certain specific venue statutes such as those that apply to claims brought against motor carriers.

The legislation establishes new provisions regarding **frivolous lawsuits**. The legislation provides a pleading must be signed by at least one attorney of record, or, if the party is not represented by an attorney, the party must sign the pleading. The signature certifies to the court that the person has read the document and believes, in good faith, the pleading is not frivolous. The attorney may be sanctioned for filing a frivolous pleading, motion, or document and for making frivolous arguments. The party may be sanctioned if he fails to disclose facts necessary to put his attorney on notice that the claim or defense is frivolous. If a document is signed in violation of these provisions, the court may impose an appropriate sanction upon the violator including: an order for the party to pay reasonable costs and attorney's fees; an order for the attorney to pay a reasonable fine to the court; or, a directive of a nonmonetary nature designed to deter future misconduct. The attorney or party must be notified before the imposition of sanctions. They then have thirty days to withdraw the document or argument, respond to the allegations, or mitigate the effects of the violation. If the court imposes a sanction, they must report their findings to the Commission on Lawyer Conduct.

In an action alleging **professional malpractice**, the plaintiff must file with the complaint, an affidavit of an expert witness specifying at least one negligent act and the factual basis for each claim. The expert must be licensed and either board certified or have actual professional knowledge and experience in the area of practice in which the opinion is to be given.

This bill revises the **statute of limitations for filing an action for a construction defect**. Current law provides that no actions to recover damages in these situations may be brought more than thirteen years after substantial completion of the improvement. The legislation lowers the statute of repose to eight years.

The legislation establishes provisions regarding **Notice and Opportunity to Cure Construction Defects**. The legislation provides that prior to filing a lawsuit against a contractor, engineer, architect, etc. for a defect in an improvement to real property, the plaintiff must provide notice of the defect and give the defendant the right to cure the defect before the lawsuit is filed. The legislation revises current law relating to residential improvements to provide the filing of these claims tolls the statute of limitations until such time as the defect is cured or the claim is considered denied. If a settlement cannot be reached within a 90-day time period, the claim is considered denied and the lawsuit may be filed. The legislation also establishes new provisions regarding Notice and Opportunity to Cure Non-Residential Construction Defects, which applies to all other types of property.

The legislation provides that **postjudgment interest rate** is equal to the prime rate as listed in the Wall Street Journal plus 4%.

The legislation provides for the **South Carolina Noneconomic Damage Awards Act**. The category of noneconomic damages is established to cover damages pertaining to quality of life that are not readily quantifiable in dollar amounts such as damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, or humiliation. The legislation places a cap of 2 million dollars on the noneconomic damages that a prevailing plaintiff in a personal injury action may be awarded. The plaintiff may also be awarded all actual economic damages.

The legislation provides that in actions where **punitive damages** are sought, the jury must determine and state the amount of any punitive damages separately from the amount of compensatory damages. Except in the case of fraud or intentional torts, punitive damages are limited to nine times compensatory damages. If the jury awards more than nine times, the court must reduce the award. The jury is not informed about the limit or any reduction. Under the legislation, all civil actions tried before a jury that involve punitive damages shall be conducted in a bifurcated trial before the same jury. In the first stage of the trial the jury shall: (1) determine and assign liability among the parties; (2) determine and award compensatory damages against the liable parties; (3) determine and award noneconomic damages against the liable parties, and; (4) determine if punitive damages are warranted against the liable parties. The jury must determine that the liable party's conduct was willful and wanton in order to make a finding that punitive damages are

appropriate. No evidence of the defendant's net worth will be admissible during the first stage of a bifurcated trial unless admissible for some purpose other than the amount of punitive damages. If there is a finding that the conduct of the liable party warrants punitive damages, the jury, in the second stage of the trial, shall consider only the amount of punitive damages to be awarded against the liable party. In making its determination the jury shall consider the following factors: (1) the liable party's degree of culpability; (2) duration of the conduct; (3) the liable party's awareness or concealment of the conduct; (4) the existence of similar past conduct; (5) the likelihood that an award will deter this party or other parties from similar conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) the defendant's ability to pay; and (8) any other factor the court considers necessary in order for the jury to make an adequate and informed determination.

The legislation revises **joint and several liability** provisions that pertain to instances where more than one tortfeasor is found to be liable. Current law provides liability among joint tortfeasors is both joint and several meaning that any tortfeasor may be responsible for the entire amount of the judgment. Under the legislation, each defendant against whom recovery is allowed is liable to the claimant only for the defendant's proportionate share of the recoverable damages. The jury or court is required to determine the amount of damages and the percentage of liability for each defendant. When damages from a liable defendant are determined to be uncollectible, a procedure is established for reallocating the uncollectible amount among the other defendants.

The House also amended, approved, and sent to the Senate a second Tort Reform measure, **H.4464**, the **MEDICAL MALPRACTICE AND PATIENT SAFETY REFORM ACT**. The legislation establishes a process under which all medical malpractice claims will be reviewed prior to being filed with the court system. To begin a medical malpractice proceeding, a claimant is required to send a demand letter to the Health Care Provider. This tolls the statute of limitations. The claim is submitted to a Medical Review Panel made up of physicians from the same specialty or area of practice. The panel reviews the claim and determines whether the claim has merit. The panel's determination is not admissible in any court proceedings. The panel does not certify the lawsuit. The opinion is forwarded to the health care provider's insurer who has 60 days after receipt of the opinion to adjust the claim. After the adjustment period, the claimant may then proceed to file his action in court. Prior to trial, the parties must participate in mediation or arbitration. The legislation imposes a \$300,000 cap on damages awarded for pain and suffering in medical malpractice liability cases. The jury is not informed of the cap. Pain and suffering does not include permanent disability, disfigurement or scarring, paralysis, or loss of limb or any organ. The cap is adjusted annually for cost of living increases. The legislation includes provisions concerning Joint and Several Liability, Contribution, and Frivolous Lawsuits as found in H.3744.

The legislation authorizes a judge to make a determination of "unjustifiable conduct" on the part of a testifying expert. If such a finding is made the expert is subject to the jurisdiction of the South Carolina Board of Medical Examiners.

The Board of Medical Examiners is authorized to charge licensure fees in an amount sufficient to carry out its required duties and to investigate complaints effectively.

Under the legislation, the Division of Health and Demographics within the Budget and Control Board shall develop procedures in conjunction with the Board of Medical Examiners that allows that office to keep records of individual Healthcare Providers outcomes. This information shall be made public. In the case of hospitals that name of the hospital will be included in the case of individual healthcare providers the names will be withheld.

The legislation provides that an insurer issuing a policy of healthcare provider medical malpractice insurance shall offer, as a part of the policy or as an optional endorsement to the policy, deductibles and policy limits optional to the policyholder.

Under the legislation, the State Treasurer shall relinquish the management of funds in the Patient's Compensation Fund to the fund's Board of Governors.

The House concurred in Senate amendments to **S.466** and ordered the bill enrolled for ratification. This bill changes the membership of the multidisciplinary team reviewing records to determine if a person is a **SEXUALLY VIOLENT PREDATOR**. The legislation eliminates from the membership list the Chief Attorney of the Office of Appellate Defense or his designee and substitutes an attorney with substantial experience in the practice of criminal defense law to be appointed by the Chief Justice to serve a term of one year. The legislation provides new requirements for notifying victims of proceedings involving sexually violent predators. The legislation also **INCREASES FEES FOR DRIVING UNDER THE INFLUENCE AND DRIVING WITH AN UNLAWFUL BLOOD ALCOHOL CONCENTRATION** and provides that one hundred dollars of each fine imposed must be placed by the Comptroller General into a special restricted account to be used by the Department of Public Safety for the Highway Patrol.

The House adopted and sent to the Senate **H.4504**, a concurrent resolution requesting a **STUDY ON NEW DRIVERS' LICENSE PROVISIONS FOR LARGE PASSENGER OR CARGO VEHICLES**. The concurrent resolution requests the Department of Public Safety in conjunction with the Department of Motor Vehicles to study what types of additional drivers' licenses or supplemental qualifications or endorsements to existing drivers' licenses are needed in South Carolina as a result of the increased sizes and types of passenger or cargo vehicles which may be operated by individuals without a commercial driver's license. The report shall be submitted to both houses of the General Assembly no later than June 1, 2004.

HOUSE COMMITTEE ACTION

LABOR, COMMERCE AND INDUSTRY

The full House Labor, Commerce and Industry Committee met on Tuesday, January 20, and gave a report of favorable with amendment on **H.4405**. This bill revises provisions relating to **FUEL COSTS INCURRED BY ELECTRICAL UTILITIES FOR THE SALE OF ELECTRICITY**, so as to further clarify that the term "fuel costs related to purchased power" includes costs of firm generation capacity purchases and the total delivered cost of economy purchases of electric power.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

The Committee reported favorable on **H.4115**, which establishes the **S.C. BIRTH DEFECTS PROGRAM** within the Department of Health and Environmental Control (DHEC) to promote understanding, prevention, and reduction of birth defects, and to provide assistance to families with children who have birth defects. Under the provisions of the bill, DHEC will conduct public health monitoring, make referrals, and provide other interventions related to birth defects. Information gathered will be used for: 1) public health and research to be published for education purposes and released in aggregate form without identifying information; and 2) facilitation of service and treatment referral so that the individual child and family may access optimal care. The bill prohibits DHEC from providing referral services or counseling for the purpose of pregnancy termination, and provides that referral procedures must be promulgated by DHEC in regulation.

The bill provides that DHEC will conduct active monitoring of birth defects, and will maintain a central database for gathering of data from hospitalizations, specialty clinics, births, pregnancies, stillbirths, and pediatric deaths through age two, throughout the state.

This bill also creates a volunteer Birth Defects Advisory Council (the Council) composed of at least 11 members appointed by the DHEC Commissioner from 11 organizations specified in the bill. Members are not entitled to compensation, mileage, per diem, or subsistence. The Council may make recommendations to DHEC regarding the establishment of procedures for the birth defects program; the transition from the existing S.C. Neural Tube Defects Prevention Program into an integrated system of comprehensive birth defects monitoring based at DHEC; the allocation of funding, cooperative agreements, and grants; and evaluation of the birth defects program.

The bill provides that an entity required to provide information to DHEC is not subject to liability for providing access and information. The bill also provides that violation of confidentiality provisions in the bill is a misdemeanor punishable by a fine of not more than \$1000 or imprisonment for not more than 180 days.

The bill authorizes DHEC to enter into agreements and contracts with federal agencies, other states, and other parties in order to facilitate operation of the program. Implementation of the provisions of the bill is contingent upon the

appropriation of state general funds or the availability of financial support from other sources and the program must be operational within one year of adequate funding becoming available.

BILLS INTRODUCED IN THE HOUSE THIS WEEK

AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

H.4566 *ILL TREATMENT OF ANIMALS* Rep. Merrill

This bill provides that certain statutes which prohibit ill treatment of animals do not apply to meat producing fowl, commercial egg laying fowl, or fowl indigenous to the State used for game or sport.

H.4591 *USE OF CROSSBOWS BY DISABLED PERSONS* Rep. Bailey

Currently, the use of crossbows for hunting certain game by persons who suffer from upper limb disabilities is legal if the person has a certain written statement from a neurologist or orthopedist. This bill adds that the statement may also come from a rheumatologist.

EDUCATION AND PUBLIC WORKS

H.4564 *SCHOOL ATTENDANCE AND DRIVING PRIVILEGES* Rep. Littlejohn

Currently, school attendance is included among the conditions under which a conditional driver's license and a special restricted driver's license may be issued, except under certain conditions. This bill requires and provides for (except under certain specified conditions) school attendance as a condition for a beginner's permit and a regular driver's license. The bill also provides that this attendance requirement is applicable for all of these licenses for a person under the age of eighteen. The bill adds as an additional exception to this requirement a person who is making satisfactory progress in a curriculum leading to a General Educational Development Certificate, or who has obtained the certificate, or a person who is excused from a requirement addressed in the bill.

**H.4565 *PUBLIC-PRIVATE EDUCATION FACILITIES AND
INFRASTRUCTURE* Rep. Herbkersman**

This bill enacts the *Public-Private Education Facilities and Infrastructure Act of 2004* to facilitate public-private partnerships for the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, and operation of education facilities and other State public infrastructure and governmental facilities.

Among other things, the bill is intended to facilitate the bond financing provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 and other sources that support expansion and acceleration of financing qualifying projects through public-private efforts. The bill delineates processes for private entities to acquire approval of a qualifying project by the responsible public entity, and provides public entities with authority to contract for the delivery of certain services. The bill authorizes and provides for public entities to dedicate a property interest that it has for public use in a qualifying project in order to reduce the delivery time or to minimize the cost of a project to the public entity.

The bill requires and provides for agreements between public and private entities which must be entered into before projects may be undertaken, and the bill includes provisions for public entities in the event of a material default by the non-governmental entity or in the event that the public entity has cause to terminate the agreement. The bill provides that the South Carolina Consolidated Procurement Code does not apply, but the bill includes certain procedures which must be adopted by a public entity before it may enter into an agreement.

H.4572 OFFICIAL TOBACCO MUSEUM OF THE STATE Rep. Battle

This bill designates the South Carolina Tobacco Museum in the City of Mullins as the official tobacco museum of the State.

H.4598 CLOSURE OF USC CAMPUSES Rep. Anthony

This bill prohibits closure of a campus of the University of South Carolina without prior authorization of the General Assembly by act or joint resolution.

H.4604 LICENSE TAG REQUIREMENTS Rep. Simrill

This bill provides that, under certain specified conditions, a motor vehicle over thirty years old and used for general transportation may bear the license plate of the vehicle's model year instead of its current registration plate.

H.4605 AUTHORIZED EMERGENCY VEHICLES Rep. Simrill

This bill provides that only authorized emergency vehicles are allowed use or display of any blue or red lights, and provides that a vehicle may not display the word "Police" unless it is an authorized emergency vehicle for use by certain sworn police officers. The bill also adds sheriff's department personnel to the list of occupants of public and private vehicles which may be designated as "authorized emergency vehicles."

**H.4606 REQUIREMENTS FOR FREE TUITION AT CERTAIN
STATE INSTITUTIONS Rep. Bales**

This bill deletes the provision that persons age sixty and over may not receive free tuition at certain state colleges, universities and institutions if they receive compensation as full-time employees.

JUDICIARY

**H.4575 NOTICE OF RULE TO SHOW CAUSE HEARING FOR ARREARAGE IN
CHILD SUPPORT OR PERIODIC ALIMONY** Rep. Sheheen

This bill provides that if the court issues a rule to show cause in a case of child support or periodic alimony arrearage, the court also shall provide written notice to the party owed the support. The notice must be provided at least five days before the hearing and must include the date, time, and place the party in arrears has been ordered to appear.

**H.4587 ESTABLISHMENT OF SPEED LIMITS ALONG LOCALLY
MAINTAINED ROADS** Rep. Young

This bill revises the procedure whereby a local authority may establish a maximum speed limit so as to provide that the provision is limited to the establishment of speed limits along locally maintained roads. Under the bill, such a speed limit may be determined not only on the basis of an engineering and traffic investigation but also by vote of the local governing body. The bill eliminates the provision that allows a local authority to establish a speed limit of less than thirty miles an hour in an urban district.

H.4595 "MARANDA'S LAW" Rep. Haskins

The bill enacts Maranda's Law to require a court to make written findings of fact concerning, among other things, the nature and extent of domestic violence committed by a person before releasing the person on bond or suspending the imposition or execution of a sentence. The bill provides that a second or subsequent offense of criminal domestic violence must be prosecuted in general sessions court.

H.4596 "SOUTH CAROLINA PLANNED COMMUNITY ACT" Rep. Davenport

This bill enacts the South Carolina Planned Community Act so as to define and provide for the governance of planned communities created after 2004.

H.4597 COMMON LAW MARRIAGE DISCONTINUED Rep. Davenport

This bill provides that a common law marriage in this state must not be recognized after December 31, 2004, unless it is established by a court of competent jurisdiction that the common law marriage existed as of December 31, 2004.

LABOR, COMMERCE AND INDUSTRY

**H.4573 COMMERCIAL MOBILE RADIO SERVICE (CMRS) EMERGENCY
TELEPHONE ADVISORY COMMITTEE** Rep. Vaughn

This joint resolution extends the term of existence for the Commercial Mobile Radio Service (CMRS) Emergency Telephone Advisory Committee to August 1, 2007, rather than August 1 of this year.

H.4589 "NATURAL GAS ADJUSTMENT ACT" Rep. Cato

This bill establishes a procedure for the adjustment of rates and charges of natural gas distribution utilities to reflect changes in expenses, revenues, investments, and depreciation. The bill provides procedures for interested parties to challenge these adjustments.

H.4599 *ELECTRIC COOPERATIVES* Rep. Cato

This bill revises the Rural Electric Cooperative Act, so as to eliminate the word "rural." The legislation makes numerous other revisions to eliminate references to rural areas in provisions governing the operation of electric cooperatives. The bill provides that electric cooperatives have the right to serve certain premises in areas annexed by municipalities or newly incorporated areas under certain circumstances and with certain exceptions.

H.4603 *SOUTH CAROLINA BUILDING CODE CHANGES* Rep. Edge

This bill provides that any changes adopted to the South Carolina Building Code by the South Carolina Building Code Council as a result of revisions suggested by the International Code Council are considered incorporated into the building code at that time and do not have to be readopted in subsequent years unless changes therein are subsequently recommended.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

H.4582 *RESPONSIBILITIES OF DATA OVERSIGHT COUNCIL* Rep. Tripp

This bill amends the responsibilities of the Budget and Control Board's Data Oversight Council (the Council) regarding collection and release of health care related data. The bill requires the Council to prepare and issue reports to the General Assembly and to the general public regarding, among other things, inpatient and outpatient health services, provider quality and service effectiveness, differences in mortality rates and other comparative outcome measures, and the incidence rate of certain medical or surgical procedures. The bill also authorizes the Council to conduct examinations, investigations, and audits and to hear testimony and take proof at public or private hearings, on any matter necessary to its duties. The bill provides that all meetings of the Council are open to the public unless otherwise provided.

WAYS AND MEANS

H.4590 *SALES TAX EXEMPTION FOR CERTAIN PRESCRIPTION MEDICINES* Rep. Bailey

This bill provides a tax exemption for the sale of prescription medicines and therapeutic radiopharmaceuticals used in the treatment of rheumatoid arthritis.

S.791 *LOTTERY VENDORS* Sen. McConnell

This bill provides that certain prohibitions and restrictions relating to a lottery vendor who is competitively soliciting for a procurement contract or who has been awarded

a procurement contract, do not apply to a lottery vendor that is a federally-chartered or insured financial institution that provides only usual and customary banking services as a lottery vendor. The bill provides that these prohibitions and restrictions *do* apply to the vendor's employees and their immediate family members who are involved on a day-to-day basis in providing the goods or services that are the subject of the contract with the Lottery Commission.

H.4600 TRUST FUND FOR TAX RELIEF Rep. Townsend

Relating to the Trust Fund for Property Tax Relief, this bill provides that operating millage levied in a county for alternative schools, career and technology centers, and county boards of education whether or not levied countywide or on a school district by school district basis in a county, also is considered school operating millage to which the property tax exemption applies. The bill requires that county treasurers consider these operating millages in determining revenue lost when making disbursements to school districts from property tax relief trust funds.

H.4601 USE OF STATE PARK FACILITIES Rep. Sandifer

Currently, State residents who are over sixty-five years of age or disabled or legally blind may use certain state park facilities without charge. This bill provides that disabled or legally blind residents may use the facilities without charge, and that residents over age sixty-five may receive a specified discount when using the facilities.

The *Legislative Update* is on the Worldwide Web. Visit the South Carolina General Assembly Home Page (<http://www.scstatehouse.net>) and click on "*Publications*," then click on "*Legislative Update*." This will list all of the *Legislative Updates* by date. Click on the date you need.

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